THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.20950 of 2005

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Dated:23.09.2005

Between:

Prembehari Lal, S/o.Late K.B.Lal,

Aged 55 years, Occ: Business,

R/o.Flat No.501, 6-2-968,

Pooja #, Khairtabad, Hyderabad.

..... PETITIONER

AND

State of Andhra Pradesh,

Rep.by its Secretary, Ministry of Municipal

Administration, Secretariat Buildings, Hyderabad, and others.

.....RESPONDENTS

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ORDER:

The petitioner is allegedly the owner of the building bearing No.6-2-968, Khairtabad, Hyderabad. The second respondent herein issued a notice purporting to be one under Sections 456 and 459 of the Hyderabad Municipal Corporation Act, 1955 ('the Act' for brevity), on 21.09.2005 directing the petitioner to vacate the building immediately and repair/remove the dilapidated structures of the premises within 24 hours. The said notice/order is assailed in the writ petition. The impugned notice/order is assailed mainly on the ground that the building is in a good condition and therefore, the provisions of Sections 456 and 459 of the Act are not attracted. The impugned order is also challenged on the ground that the same was not preceded by any notice as contemplated under Section 459 of the Act.

At the time of preliminary hearing itself, the learned Standing Counsel for MCH has placed before this Court the relevant file in support of the contention that the due procedure contemplated under Sections 454, 456 to 459 of the Act has been followed.

A perusal of the file would show that Shanta Lal, resident of a house bearing No.6-2-969 gave a complaint to the Assistant City Planner, Circle No.5, Municipal

Corporation of Hyderabad (for short 'the MCH') on 02.09.2005, *inter alia,* complaining that the building bearing No.6-2-968 is totally in a collapsible stage and part of the building is already collapsed, and that the said building situated towards the north side of Shanta Lal's property has become a danger to her property as well as persons living there. Action was initiated thereon, and a report was submitted by the Assistant City Planner to the effect that a part of the building was already collapsed and fell on the neighbour's premises. The Inspecting Official also opined that the building has become a source of danger to the people. After receiving the report, a notice was issued under Section 459 of the Act and a report was further put up to the Executive Engineer. The Official of the Municipal Corporation of Hyderabad, who went to serve the notice on the petitioner under Section 459 of the Act, having found no person available in the premises bearing No.6-2-968, pasted a copy of the notice to the wall. When the same was submitted to the Executive Engineer IX, MCH, the impugned order was issued. The Official who went to inspect the premises and served the notice under Section 459 of the Act also took pictures of the premises and the portion of the building, which fell down/collapsed. These photographs are found in the file produced before this Court.

Section 456 of the Act empowers the Commissioner to direct the owner/occupier of the building to repair or remove the building, which is in dilapidated condition or to vacate the premises. Under sub-section (1) of Section 456 of the Act, discretion is given to the Commissioner to require the occupier or owner of the structure either to pull down, secure, remove or repair. Whereas under sub-section (2) of Section 456 of the Act, the Commissioner can direct the owner or occupier to fence the building which is in dilapidated condition before undertaking the repair or pulling down the structure. In either of these situations, the Commissioner as contemplated under Section 459 of the Act is required to give notice. Here, it may be necessary to read Section 459 of the Act, which is extracted hereunder.

> **459. Opportunity for stating objections:-** The Commissioner shall issue a notice under sub-sections (1) and (2) of Section 456, sub-section (1) of Section 457 or sub-section (1) of Section 458, after giving the owner or occupier, as the case may be, a reasonable opportunity of stating any objection and adducing evidence, if any, and after being satisfied that the objection which is raised is invalid or insufficient.

A plain reading of the above would show that the Commissioner is required to issue a notice before passing any order under sub-sections (1) and (2) of Section 456, or sub-section (1) of Section 457 of the Act. The same is not the situation when a situation would arise as contemplated under sub-section (3) of Section 456 of the Act, which is to the effect that if the Commissioner is of the opinion that there is a danger from the structure which is ruinous or about to fall, he may, before giving notice, direct the owner or occupier to take such steps as may be required to arrest the danger.

The submission of the learned counsel for the petitioner is to be appreciated in the background of legal provisions as above. The file produced before this Court would

belie any submission that the impugned notice/order was not preceded by any notice as contemplated under Section 459 of the Act. Even otherwise, the present impugned order can be justified under Section 456(3) of the Act. To come to such conclusion, there is evidence in the shape of photographs taken by the Inspecting Official, which are found in the file.

The writ petition is devoid of merits and the same is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

23.09.2005

Note: Issue C.C. by 27.09.2005.

B/o.

vs